

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 73 and 74 of the)	
Commission's Rules to Establish Rules)	
for Digital Low Power Television,)	
Television Translator and Television)	MB Docket No. 03-185
Booster Stations and to Amend Rules)	
for Digital Class A Television Stations)	

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("PCC"), by its attorneys, hereby submits these comments in response to the Notice of Proposed Rule Making in the above-captioned proceeding.¹

PCC believes that initiating this rule making now threatens to unnecessarily disperse the Commission's limited administrative and spectrum resources. At this point all the Commission's time and energy should be dedicated to resolving important full-power DTV issues like multicast must-carry,² Canadian border issues, the accommodation of single-channel broadcasters, and the processing of ungranted DTV construction permits.³ The NPRM appears to propose that the Commission begin immediately assigning new spectrum to low-power and translator stations to enable them to commence dual analog/digital operations. From a practical standpoint, it makes no sense to consider allocating vacant DTV spectrum to low

¹ Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Notice of Proposed Rule Making*, MB Docket No. 03-185, FCC 03-198 (rel. Aug. 29, 2003) (the "*NPRM*"). These comments are timely filed within 60 days of Federal Register publication of the *NPRM*. See 68 Fed. Reg. 55566 (Sept. 26, 2003).

² Carriage of Digital Television Broadcast Signals Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120, CS Docket No. 00-96, CS Docket No. 00-2, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 01-22 (rel. Jan 23, 2001).

³ Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest

power and translator stations when there are numerous broadcasters that do not yet have a paired channel and still others that have yet to be granted their DTV construction permits.

This course would only further delay many broadcasters' DTV transition without furthering the transition as a whole. If the Commission feels compelled to address low-power DTV issues at this time, it should conclude that these stations are permitted to flash-cut to digital at any time up until the end of the DTV transition, but affirm that no new spectrum will be dedicated to LPTV or television translator stations until all full-power stations are accommodated. In particular, the Commission should refrain from adding new services in the 700 MHz spectrum band. Doing so only would make more contentious and time-consuming the process of clearing the band for new wireless and public safety services.

INTRODUCTION

PCC is the licensee of 58 full-power, 12 low-power, and 2 UHF translator stations, as well as the owner of PAXTV, the nation's newest emerging broadcast television network. PCC has participated in every phase of the Commission's regulatory proceedings addressing DTV conversion issues and has been a leader in the DTV transition, constructing DTV facilities for 34 of its full-power stations and actively promoting the innovative use of broadcasters' DTV capacity for services such as multicasting. PCC has actively supported the Commission's DTV transition policies both through its rapid DTV buildout and its aggressive efforts to clear the upper 700 MHz band.

The *NPRM* appears to herald the Commission's next major DTV initiative – the introduction of low-power DTV stations and translators into the overcrowded television broadcast spectrum. As the Commission explains, its goal is to “provide flexible and affordable opportunities for low power

Obligations, *Notice of Proposed Rulemaking*, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, MM Docket No. 00-168, FCC 03-8 (rel. Jan. 27, 2003) (“*DTV Second Biennial Review*”).

digital service, both through the digital conversion of existing analog service, and, where spectrum is available, new digital stations.”⁴ Although this goal appears desirable – even laudable – PCC is amazed that the Commission is even considering the allocation of additional broadcast spectrum at this stage in the transition, when the Commission has yet to accommodate existing full-power broadcasters. In so proposing, **PCC greatly fears that the Commission is confusing its priorities and risks putting the low-power DTV cart before the full-power DTV horse.** Until the Commission has resolved the outstanding issues facing full-power DTV spectrum allocations, it will remain inappropriate for the Commission to allocate additional spectrum to low power stations.

I. THE COMMISSION FACES TOO MANY PRESSING DTV TRANSITION ISSUES TO JUSTIFY DEDICATING ITS ADMINISTRATIVE AND SPECTRUM RESOURCES TO LPTV AND TRANSLATOR STATIONS.

The Commission’s proposal to grant paired channels to existing LPTV stations and translators would not be a wise use of the Commission’s limited administrative and spectrum resources. At this point, the Commission has not even resolved a number of issues involving spectrum allocations for full-power stations.

PCC, for example, still has six stations that have not yet been awarded a paired DTV channel. These stations include:

Stations	Community of License	NTSC Channel	DMA (Rank)
KPXL(TV)	Uvalde, TX	26	San Antonio, TX (37)
KFPX(TV)	Newton, IA	39	Des Moines, IA (70)
KGPX(TV)	Spokane, WA	34	Spokane, WA (78)
KPXJ(TV)	Minden, LA	21	Shreveport, LA (79)
WSPX-TV	Syracuse, NY	56	Syracuse, NY (81)
WEPX(TV)	Greenville, NC	38	Greenville-New Bern-Washington, NC (106)

These and other stations without paired channels should be provided a digital channel by the FCC at the earliest opportunity.

⁴ See *NPRM*, ¶ 1.

The Commission now does appear to be processing petitions for rule making requesting paired channels,⁵ but PCC has had a petition for a new channel for its station WSPX-TV, Syracuse, New York, for more than a year and the FCC has yet to process it.⁶ The Commission does not have unlimited administrative resources, and siphoning off some of them to process new channel requests from low-power stations will only reduce that which can be spent on channel requests for full-power stations. Those resources should instead be devoted to processing requests such as PCC's for the Syracuse digital channel.

PCC also has six construction permit applications pending for stations that have been granted a paired channel. These include:

Stations	Community of License	DTV Channel	DMA (Rank)
WBPX-DT	Boston, MA	32	Boston, MA (6)
WPXD-DT	Ann Arbor, MI	33	Detroit, MI (10)
WVPX-DT	Akron, OH	59	Cleveland, OH (17)
KPXC-DT	Denver, CO	43	Denver, CO (18)
WPXJ-DT	Batavia, NY	53	Buffalo, NY (47)
WPXQ-DT	Block Island, RI	17	Providence, RI-New Bedford, MA (49)

The Commission has acknowledged that the DTV construction permit applications that remain ungranted are those with unresolved technical problems that make processing more labor intensive.⁷ These outstanding applications, as well as many others, should be processed through to grant prior to diverting resources to LPTV matters.

⁵ Pocatello, Idaho, *Notice of Proposed Rulemaking*, MB 03-234, DA 03-3561 (rel. November 14, 2003).

⁶ Bath and Syracuse, New York, *Petition for Rule Making of Paxson Syracuse License, Inc. To Amend the TV and DTV Table of Allotments*, filed November 8, 2002.

⁷ *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5946, ¶ 7 (2001).

The Commission also has yet to resolve myriad Canadian border issues that are delaying DTV conversion for many stations within the Canadian and Mexican border zones, including three PCC stations:⁸

Stations	Community of License	DTV Channel	DMA (Rank)
WPXD-DT	Ann Arbor, MI	33	Detroit, MI (10)
WVPX-DT	Akron, OH	59	Cleveland, OH (17)
WPXJ-DT	Batavia, NY	53	Buffalo, NY (47)

Here again, before the Commission diverts its processing resources to digital LPTV, it ought to straighten out the troubling border disagreements that threaten to permanently impair full-power DTV services.

The resolution of each of these categories of outstanding issues, both for PCC and all other similarly situated broadcasters, will place additional demands on broadcast spectrum and will tax the Commission's internal processing resources. Yet resolution of each of these matters is essential because all parties acknowledge that the DTV transition will be driven by full-power stations. PCC understands that as secondary services, LPTV and translator stations theoretically provide no impediment to the Commission's resolution of these issues. Under the rules, the Commission can allot a channel to a new digital low-power station one week and grant a conflicting full-power DTV application the next. PCC cautions, however, that even as secondary services, low-power and translator stations can complicate planning and make it more difficult for the Commission to follow through with regulatory decisions that would lead to widespread displacement.

Consequently, permitting LPTV and translator stations to request additional DTV channels will only further strain the Commission's ability to timely process full-power applications without furthering the transition in any material way. To avoid these potential problems, the prudent course

⁸ See Comments of Paxson Communications Corporation, *DTV Second Biennial Review*, at 23-26 (filed April 21, 2003).

for the Commission at this time is to concentrate on solving the problems that still delay full-power stations' DTV conversion without the added distraction of providing new spectrum to low power and translator stations.

II. THE ALLOCATION OF NEW CHANNELS TO LPTV OR TRANSLATOR STATIONS IS NOT NECESSARY OR DESIRABLE AT THIS STAGE IN THE TRANSITION.

A. Although the Commission Eventually Must Facilitate the Use of DTV Low-Power and Translator Services To Allow Many Broadcaster's To Provide Full Service to Their Communities, Now Is Not the Time To Do So.

PCC acknowledges the important role that LPTV and translator stations play in ensuring that full-power television stations are able to serve their entire communities of license, particularly in markets with mountainous terrain. Indeed, as a licensee of 14 such stations and a prospective licensee of 6 more, PCC is very familiar with the benefits these stations bring to broadcasters and viewers alike. Eventually, the Commission must ensure that DTV low-power and translator stations enable broadcasters to provide the seamless service that viewers have come to rely on in the analog world. At this point in the DTV transition, however, allotment of additional channels to LPTV and translator stations for DTV operation will not advance the transition and may do much to hinder it.

First, although low-power and translator stations eventually will be necessary for many licensees to serve their communities, most stations still are operating with only low-power DTV facilities under grant of special temporary authority.⁹ These stations are not attempting to reach their entire communities with their DTV signals in any case, so they certainly have no need to utilize the fill-in capabilities of low-power or translator stations. Until consumer adoption of DTV technology reaches an appreciable level, there will be little justification for adopting policies

⁹ Information regarding current DTV construction and operations is taken from the FCC's October 15, 2003, report, available at <http://www.fcc.gov/mb/video/files/dtvonairsum.html> (last visited November 20, 2003) (showing that nearly 60% of commercial stations are on air with STA facilities; for stations that are not network affiliates in the top 30 markets, the percentage is closer to 65%).

designed to facilitate immediate full coverage of stations' service populations using LPTV and translator stations.

Nearer the end of the transition, the Commission should examine the allotment of channels to stations that need LPTVs or translators for DTV fill-in purposes so that broadcasters have adequate time to plan and test their operations before they are required to provide full-power DTV service to their entire service area.

B. The Allocation of New Channels to DTV Low-Power and Translator Stations Must Wait At Least Until the Commission Completes the Channel-Election Process and Finalizes Its Spectrum Repacking Plan.

The Commission now is only about 18 months away from its proposed channel election deadline for full-power stations.¹⁰ By that time, the Commission will need to make final decisions about the shape of the permanent DTV allocation scheme. Shrinking the broadcast spectrum from Channels 2-69 to Channels 2-51 will be no small feat. PCC understands that those parties currently developing a repacking plan are finding it very difficult to repack current stations into the available spectrum. Needless to say, the current plans are being formulated without any need for considering numerous new low-power and DTV translator operations. Again, although these stations will be secondary, their very presence makes planning more complex and potentially contentious. As a matter of principle, the Commission should avoid creating new stakeholders on DTV spectrum when future demands for that spectrum still are highly uncertain.

III. AT MOST, THE COMMISSION SHOULD APPROVE LOW-POWER AND TRANSLATOR DTV CONVERSION AT THE OPTION OF THE STATION.

PCC does not object to the Commission's proposal that low-power and translator stations be permitted to flash-cut to DTV operations at their option at any point before the end of the

¹⁰ *DTV Second Biennial Review*, ¶¶ 24-27 (proposing May 1, 2005 channel election date).

transition.¹¹ This approach would permit low-power stations to respond to the emerging market for DTV services and make the transition when viewers are ready to support it. The Commission, however, should make clear that low-power and translator stations will not be required to commence DTV operations until the full-power transition is complete, but that they will be permitted to do so upon notice and Commission approval.

PCC wishes to point out, however, that even this course is not without risk. If significant numbers of low power and translator stations convert early, the Commission may be forced to displace those stations when the full-power repacking plan is completed. Because of the substantial investments that low power licensees will have made, the Commission can expect them to resist a repack plan that causes widespread displacement. Accordingly, the Commission should make clear that any conversion is –like all low-power operations – at the station’s own risk and that the Commission will not be sympathetic to future complaints about stranded investments in DTV equipment.

IV. THE COMMISSION SHOULD AVOID NEW LOW-POWER ALLOCATIONS IN THE 700 MHZ BAND.

The Commission has requested comment on whether it should make the 700 MHz spectrum (Channels 52-69) available for low-power and DTV translator operations during the transition.¹² PCC states emphatically that it should not do so, regardless of whether in-core channels are available for low-power DTV operation.

The possibility of 700 MHz low-power DTV allotments shows how potentially counterproductive the Commission’s proposal to grant new low-power allotments really is. Time and again the Commission has noted that clearing the 700 MHz band of broadcasters for the

¹¹ *NPRM*, ¶ 22.

¹² *Id.*, ¶¶ 29-30.

introduction of new wireless and public safety services is an integral part of the DTV transition.¹³ Plainly, if the Commission still believes that clearing those bands remains a viable possibility, it makes little sense to create an entire new class of temporary users of that spectrum – another set of stakeholders in whose interests it will be to stall band-clearing and the end of the DTV transition.

If the Commission allocates channels in the 700 MHz band to low-power and DTV translators, it will send yet another message to broadcasters and wireless operators alike that the Commission does not plan to clear the band for the foreseeable future. Of course, the main losers if the Commission chooses this course will be the public which will be deprived both of the early introduction of 3G wireless services and the improved public safety services that this spectrum promises to offer. PCC still believes that the 700 MHz bands can be cleared before the close of the transition, but the way to accomplish that is not by creating more licensees with a stake in the continued encumbrance of the band. Accordingly, PCC strongly urges the Commission to avoid allowing DTV low-power and translator stations to use the 700 MHz band during the DTV transition.

CONCLUSION

PCC applauds the Commission's continued vigorous promotion of the DTV transition, and PCC will continue to do all it can to bring the DTV transition to a successful close. At the same time, however, PCC encourages the Commission to recognize that right now there are much more important issues that demand its attention than low-power DTV stations. Substantial matters such as granting DTV permits to full-power stations so they can buildout their facilities – as well as multicast must-carry and the issues raised in the *DTV Second Biennial Review* – demand immediate attention from the Commission and every moment it spends attempting to resolve the issues raised

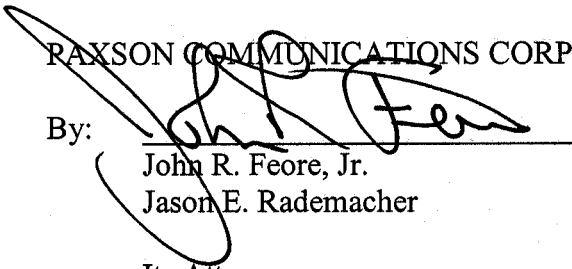
¹³ Auction Reform Act of 2002, *Report to Congress*, 18 FCC Rcd 12556, ¶¶ 6, 41 (2003); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10977 ¶18 (1996).

by the *NPRM* – issues that will not become significant for several years – is a moment not spent on these more pressing issues. The issues of granting paired DTV channels to those full-power broadcasters that currently do not have them and of granting the outstanding DTV construction permits of those that do are particularly important. **Many broadcasters, including PCC have waited patiently for a long time for the Commission to tackle these issues, so they can participate in the digital transition and fulfill the government's mandate. If the Commission does not soon do so, these disenfranchised full-power broadcasters who have been deprived of the opportunity to participate fully in the DTV transition will have no choice but to turn to the courts for relief from what more and more appears to be unequal treatment of similarly situated parties.**¹⁴ If the Commission wishes to maintain the momentum that the transition has built up over the past two years, it must keep its attention where it belongs. There will be time to take care of clean-up issues like low-power and DTV translator operations when the DTV transition is in its final stages.

Respectfully Submitted,

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¹⁴ Cf. *Melody Music, Inc. v. F.C.C.*, 345 F.2d 730, 732 (D.C. Cir. 1965) ("Melody Music") (Commission must treat similarly situated parties equally).